

Chapter 807 ADULT ENTERTAINMENT BUSINESSES*

***Editor's note:** General Ordinance No. 87, 2003, amended the title of chapter 807 to read as herein set.

Cross references: Public decency, obscenity, ch. 421; amusement locations and machines, ch. 831.

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ARTICLE I. PURPOSE, FINDINGS, AND DEFINITIONS**Sec. 807-101. Statement of purpose.**

It is the purpose of this chapter to regulate adult entertainment businesses and related activities, to promote the health, safety, morals, and general welfare of the citizens of Marion County, and to establish reasonable and uniform provisions to prevent the deleterious effects of adult entertainment businesses within Marion County. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Further, it is not the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials. It is not the intent nor effect of this chapter to limit or restrict the lawful activities permitted under Indiana Code 7.1.

(G.O. 87, 2003, § 1)

Sec. 807-102. Findings.

Based on evidence concerning the adverse secondary effects of adult entertainment businesses on the community presented in hearing(s) and in reports made available to the City-County Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S.41 (1986), *Young v. American Mini Theatres*, 426 U.S.50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S.560 (1991), *Arcara v. Cloud Books, Inc.*, 478 U.S.697 (1986), *California v. LaRue*, 409 U.S.109 (1972), *Iacobucci v. City of Newport, KY*, 479 U.S.92 (1986), *United States v. O'Brien*, 391 U.S.367 (1968), *City of Erie v. Pap's A.M.*, 120 S.Ct. 1382 (2000), *City of Los Angeles v. Alameda Books, Inc.*, 122 S.Ct. 1728 (2002), *Broadway Books, Inc. v. Roberts*, 642 F. Supp. 486 (E.D. Tenn. 1986), *DLS, Inc. v. City of Chattanooga*, 107F.3d403 (6th Cir. 1997), *Pleasureland Museum, Inc. v. Beutter*, 2002 WL 818791 (7th Cir. 2002), *Kev, Inc. v. Kitsap County*, 793F.2d1053 (9th Cir. 1986), *Hang On, Inc. v. City of Arlington*, 65F.2d1248 (5th Cir. 1995), *South Florida Free Beaches, Inc. v. City of Miami*, 734F.2d608 (11th Cir. 1984), and *Mitchell et al v. Commission on Adult Entertainment Establishments of the State of Delaware et al*, 10F.3d123 (3rd Cir. 1993), *Ellwest Stereo Theatre, Inc. v. Boner*, 718 F. Supp. 1553 (M.D. Tenn. 1989), *City of Lincoln Nebraska v. ABC Books, Inc.*, 470 N.W. 2d 760 (Neb. 1991), *Berg v. Health & Hosp. Corp. of Marion County*, 865 F.2d 797 (7th Cir. 1989), *Shultz v. Cumberland*, 228 F.3d 831 (7th Cir. 2000), as well as studies conducted in communities including, but not limited to Indianapolis, Indiana; Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group On the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the city-county council finds:

- (1) Adult entertainment businesses lend themselves to ancillary unlawful and unhealthy activities that are presently insufficiently controlled by the operators of the establishments;
- (2) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where adult entertainment businesses are located;
- (3) Sexual acts, including masturbation, oral sex and anal sex, occur at adult

entertainment businesses, especially those which provide booths or cubicles for viewing films, videos, or live sex shows;

(4) Acts of prostitution commonly occur at adult entertainment businesses;

(5) Persons frequent certain adult theaters and other adult entertainment businesses for the purpose of engaging in sex within the premises;

(6) At least fifty (50) communicable diseases may be spread by activities that occur in adult entertainment businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, salmonella infections and shigella infections;

(7) In the four (4) years preceding the effective date of this ordinance, the city experienced an outbreak of primary and secondary (infectious) syphilis, yielding the highest and second highest annual case rates of any city and county in the United States;

(8) Prostitution, sexual assaults and other criminal activity occur at adult entertainment businesses;

(9) Prostitution is connected to the spread of sexually transmitted diseases;

(10) Adult entertainment businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns; and.

(11) The general welfare, health, morals and safety of the citizens of the city will be promoted by the enactment of this chapter.

(G.O. 87, 2003, § 1)

Sec. 807-103. Adult bookstore.

As used in this chapter, adult bookstore means and includes an establishment having at least twenty-five percent (25%) of its:

(1) Retail floor space used for the display of adult products; or

(2) Stock in trade consisting of adult products; or

(3) Weekly revenue derived from adult products.

For purposes of this definition, the phrase adult products means books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. For purposes of this definition, the phrase adult products also means a device designed or marketed as useful primarily for the stimulation of human genital organs, or for sadomasochistic use or abuse. Such devices shall include, but are not limited to, phallic shaped vibrators, dildos, muzzles, whips, chains, bather restraints, racks, non-medical enema kits, body piercing implements (excluding earrings or other decorative jewelry) or other tools of sado-masochistic abuse.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-1.

Sec. 807-104. Adult cabaret.

As used in this chapter, adult cabaret means and includes a nightclub, bar, theater, restaurant or similar establishment that regularly features:

- (1) Live performances by topless or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas;
- (2) Films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons;
- (3) Persons who appear in a state of nudity or semi-nudity; or
- (4) Persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customer.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-2.

Sec. 807-105. Adult drive-in theater.

As used in this chapter, adult drive-in theater means and includes an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions, and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a preponderance of the total presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-3.

Sec. 807-106. Adult entertainment business.

As used in this chapter, adult entertainment business means and includes an adult bookstore, adult motion picture theater, adult mini motion picture theater, adult motion picture arcade, adult cabaret, adult drive-in theater, adult live entertainment arcade, adult motel, or adult services establishment, which is not operating under a valid Indiana Alcoholic Beverage Commission permit for retail sales of wine, beer or liquor for on-premises consumption.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-4.

Sec. 807-107. Adult live entertainment arcade.

As used in this chapter, adult live entertainment arcade means and includes any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed or screened area or booth a series of live dance routines, strip performances or other gyrational choreography, which performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-5.

Sec. 807-108. Adult mini motion picture theater.

As used in this chapter, adult mini motion picture theater means and includes an enclosed building with a capacity of more than five (5) but less than fifty (50) persons, used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-6.

Sec. 807-109. Adult motel.

As used in this chapter, adult motel means and includes a hotel, motel or similar establishment offering public accommodations for any form of consideration that offers a sleeping room for rent for a period of time that is less than ten (10) hours or allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours, and that provides patrons, upon request, with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-7.

Sec. 807-110. Adult motion picture arcade.

As used in this chapter, adult motion picture arcade means and includes any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-8.

Sec. 807-111. Adult motion picture theater.

As used in this chapter, adult motion picture theater means and includes an enclosed building with a capacity of fifty (50) or more persons used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-9.

Sec. 807-112. Adult service establishment.

As used in this chapter, adult service establishment means and includes any building, premises, structure or other facility, or any part thereof, under common ownership or control which provides a preponderance of services involving specified sexual activities or display of specified anatomical areas.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-10.

Sec. 807-113. Nudity or state of nudity.

As used in this chapter, nudity or state of nudity means and includes the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genital, or vulva, with less than a fully opaque covering or a female breast with less than a fully opaque covering of any part of the nipple, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-11.

Sec. 807-114. Semi-nude or semi-nudity.

As used in this chapter, semi-nude or semi-nudity means and includes a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

(G.O. 87, 2003, § 1)

Sec. 807-115. Specified anatomical areas.

As used in this chapter, specified anatomical areas means and includes any of the following:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or
- (2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-11.

Sec. 807-116. Specified sexual activities.

As used in this chapter, specified sexual activities means and includes any of the following:

- (1) Human genitals in a state of sexual stimulation or arousal;

- (2) Acts of human masturbation, sexual intercourse or sodomy;
- (3) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts;
- (4) Flagellation or torture in the context of a sexual relationship;
- (5) Masochism, erotic or sexually oriented torture, beating or the infliction of pain;
- (6) Erotic touching, fondling or other such contact with an animal by a human being; or
- (7) Human excretion, urination, menstruation, vaginal or anal irrigation as part of or in connection with any of the activities set forth in (1) through (6) above.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-12.

ARTICLE II. LICENSURE**Sec. 807-201. Applicability.**

The following sections of this Code shall have no application to a license applied for or issued under this chapter: subsection (5) of section 801-201; section 801-202; subsection (b) of section 801-207; section 801-303; and, sections 801-412 through 801-415, inclusive.

(G.O. 87, 2003, § 1)

Sec. 807-202. License required.

(a) It shall be unlawful for any person to maintain or operate an adult entertainment business in the city without first obtaining a license therefor from the controller.

(b) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the city that the applicant is in compliance with all of the provisions of this chapter. The renewal of the license shall be subject to the payment of the fee as set forth in section 807-203 of the Code.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-21.

Sec. 807-203. License fee.

The annual license fee shall be for the period of January first to December thirty-first and shall be seventy-five dollars (\$75.00) for each business location.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-22.

Sec. 807-204. Application for license.

(a) All applications for licenses shall be made to the controller. The application for a license required by this article shall include the following information:

- (1) Name and business address of the applicant;
- (2) The name and address of the business;
- (3) Telephone number of the applicant;
- (4) The state of incorporation (where applicable);
- (5) The names of partners or corporate officers (where applicable);
- (6) The registered agent, his or her address, and the principal office of the corporation (where applicable);
- (7) The length of time the business has been in Indianapolis;
- (8) Any previous location or location change of the business within two (2) years;

- (9) The applicant's citizenship;
- (10) Whether or not the applicant or any partner or corporate officer for the applicant business has ever been denied a license, had a license revoked or suspended;
- (11) Whether all city, county and state taxes have been paid;
- (12) The seating capacity of the establishment; and
- (13) The number of business locations, stages, motion picture or video screens, closed circuit televisions and motion picture or video screens, projectors or other image-producing devices.

(b) The application shall be signed and sworn to be true and correct by the applicant.

(c) Where a person seeks a license to operate an adult entertainment business, the applicant may begin operating the facility forty-five (45) days after submitting a completed application, even in those instances when the controller denies the request to issue a license, except as otherwise set forth in this paragraph. The controller shall have forty-five (45) days in which to determine whether to issue a license. If the controller fails to act by either granting or denying the license within forty-five (45) days, the license shall be granted by operation of law. If the controller denies the request to issue a license, the controller shall issue a conditional license to operate if a timely petition for judicial review is filed within ten (10) days of receipt of notice of the controller's decision. Such a conditional license shall operate in all respects as a license until judicial review is completed by a trial court of competent jurisdiction. A conditional license shall not permit the applicant to operate in violation of any other ordinance or law. In particular, the applicant shall not operate in violation of any zoning requirement set forth in section 732-216 of the Code.

(d) During the term of a license under this chapter, a licensee shall provide the controller with written notice of any additions or changes in the information given in the license application.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-23.

Sec. 807-205. Grounds for denial.

An application for a license or for renewal of a license under this chapter may be denied if the applicant:

- (1) Where applicable, is not a corporation organized by law or authorized and qualified to do business in the state;
- (2) Has not fully paid the license fee;
- (3) Is delinquent to the city, county or state for any taxes, or is indebted to the city, county or state for any other reason unless the delinquency or indebtedness is the subject of pending litigation; or
- (4) Has failed to provide all information required by this article or has falsely provided such information.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-25.

Sec. 807-206. Grounds for suspension or revocation; controller's hearing.

(a) A license granted under this article may be suspended or revoked for any reason an application for renewal may be denied under section 807-205 of this Code, or if the licensee:

- (1) Conducts the business or maintains the premises in such a manner as to create a nuisance to the public;
- (2) Knowingly permits any illegal conduct or practice to take place on the business premises or in the conduct of the business; or
- (3) Violates the premises requirements or operational requirements provided in section 807-301 or section 807-302 of this Code.

(b) A suspension or revocation of a license under this chapter shall not be made without first holding a controller's hearing under the procedures provided in Chapter 801, Article IV, Division 2 of this Code.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-26.

Sec. 807-207. Judicial review of denial, suspension or revocation.

(a) A denial of an application for a license or for renewal of a license under this chapter shall not be subject to administrative review under the procedures provided in Chapter 801, Article IV, Divisions 2 and 3 of this Code, but in the alternative may be appealed to the Marion Superior Court.

(b) A suspension or revocation of a license under this chapter shall not be subject to administrative review under the procedures provided in Chapter 801, Article IV, Division 3 of this Code, but in the alternative may be appealed to the Marion Superior Court.

(c) The appeal of a denial, suspension or revocation under this chapter shall be subject to the same rules and procedures, and shall be conducted in the same manner, as prescribed for judicial review under Indiana Code Chapter 4-21.5-5, as the same shall be amended from time to time; provided, however, that notwithstanding the provisions of those statutes, the following requirements apply to a petition for judicial review filed under this chapter:

- (1) The petition must be filed within ten (10) days of the issuance of the controller's decision; and
- (2) Within fourteen (14) days from the date the city was served with the petition, the controller shall prepare the city's record for the petitioner to transmit to the court.

(G.O. 87, 2003, § 1)

ARTICLE III. REGULATIONS**Sec. 807-301. Premises requirements.**

(a) It shall be unlawful to own or operate an adult entertainment business that is not in compliance with the requirements stated in this section, provided that adult entertainment businesses in operation on the effective date of this ordinance shall have sixty (60) days from such effective date to come into compliance with subsections (b) through (h) of this section.

(b) Upon application for an adult entertainment business license or a renewal of such a license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The controller may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since the diagram was prepared.

(c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the controller.

(d) Restrooms may not contain video reproduction equipment.

(e) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (b) of this section.

(f) Except for those premises identified in sections 807-105, 807-108, 807-109, and 807-111 of the Code and those premises identified in subsection (h) of this section, the premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than ten (10) foot candles as measured at the floor level. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described in this subsection is maintained at all times that any patron is present in the premises.

(g) All locational requirements of this section must be approved or denied by the controller within forty-five (45) days from the time the application is filed.

(h) With respect to an adult entertainment business that has individual booths:

(1) Each booth shall have a rectangular shaped entranceway of not less than two (2) feet wide and six (6) feet high;

(2) There shall be no door, curtain or other obstruction blocking or closing off such entranceway so as to obstruct the visibility of a patron ;

(3) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises;

(4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. Viewing booths must be separated at least twelve (12) inches from the exterior walls of any other viewing booths by open space; and

(5) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than ten (10) foot candles as measured at the floor level. However, if a lesser level of illumination shall be necessary to enable a patron to view the adult entertainment in a booth, a lesser amount of illumination may be maintained in the booth, provided, however, at no time shall there be less than two (2) foot candles of illumination, as measured from the floor. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described in this subsection is maintained at all times that any patron is present in the premises.

(i) A person having a duty under subsections (b) through (h) of this section commits a violation if he or she knowingly fails to fulfill that duty.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-27.

Sec. 807-302. Operational requirements.

(a) It shall be unlawful to own or operate an adult entertainment business that is not in compliance with the requirements stated in this section.

(b) An adult entertainment business shall be kept in a sanitary condition at all times. As a condition of licensure under this chapter, the controller or controller's designee shall have the right to enter any licensed premises during business hours without notice to insure compliance with this chapter, and it shall be unlawful for a person to prevent or deny any such entry. The controller shall have the power to determine if such business is in a sanitary condition. For such purpose, the controller shall have, upon demand, the assistance of the administrator of the division of compliance of the department of metropolitan development, and the Health and Hospital Corporation of Marion County. If the controller shall determine, after investigation by the division of development services or the Health and Hospital Corporation of Marion County, that an unsanitary condition exists within an adult entertainment business, the controller shall suspend the license for such premises until such unsanitary condition is rectified.

(c) No licensee under this article, or his employee, shall violate any state statute or city ordinance, or allow any other person to commit such a violation, within such business or on parking areas or other property immediately adjacent to or normally used for purposes of parking for such business, which property is under the control of the business owner or owners or their lessee or lessor.

(d) Adult entertainment businesses shall not be open between the hours of midnight and 10:00 a.m. and shall not be open on Sundays.

(G.O. 87, 2003, § 1)

Note: Formerly § 807-28.

ARTICLE IV. SEVERABILITY

Sec. 807-401. Severability.

In the event any section, subsection, clause, phrase or portion of this chapter is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this chapter. It is the legislative intent of the council that this chapter would have been adopted if such illegal provision had not been included or any illegal application had not been made.

(G.O. 87, 2003, § 1)